IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

ORDER

::

S.B. Sales Tax Revision No. 298/2005

Assistant Commercial Taxes Officer,
Ward IV, Circle-H, Jaipur

Versus

M/s Suresh Gems,
3795, M.S.B. Ka Rasta, Johri Bazar, Jaipur

Date of order :: August 21, 2007

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. R.B. Mathur for the petitioner-Revenue

BY THE COURT:

1. Heard learned counsel for the Revenue.

2. This revision petition is directed against the order passed by the Tax Board dated 17.10.2003, whereby the Tax Board upholding the order of the first appellate authority, i.e. Deputy

Commissioner (Appeals), dated 17.08.2002, held that the respondent assessee was entitled to avail the benefit of composition scheme for precious and semi-precious gems and stones. The said scheme was notified by the State Government on 30.04.1999 and the period of the said scheme was five years.

3. The said notification containing the composition scheme is reproduced hereunder for ready reference:-

> *"S.No. 1263 : F.4(4)FD/Tax Div./99-221 dated 30.4.1999*
>
> *S.O. .- In exercise of the powers conferred by S.5, RST Act, 1994, the State Govt. [.1.] hereby notifies the* ***"Composition Scheme for registered dealers dealing in all kinds of synthetic gems and stones and all kinds of precious and semi-precious gems and stones (including kharad), pearls (whether real or cultured) and diamonds"*** *(hereinafter referred to as "the scheme"), and permits such dealers to opt for composition amount in lieu of their tax liability in respect of their sales of all kinds of synthetic gems and stones and all kinds of precious and semi-precious gems and stones (including kharad), pearls (whether real or cultured) and diamonds, within the State on payment of composition amount determined on the basis of their gross turnover as certified by the Jewellers Association, Jaipur or as disclosed in their books of accounts.*
>
> *1.* ***Date of commencement.-*** *This scheme come into force with effect from April 1, 1999.*

2.0 **Composition amount.-** The composition amount to be paid per annum per dealer in lieu of tax shall be for the composition period of five years and shall be determined for the first year as follows:-

Item No.	Annual gross turnover in the immediate preceding year	Annual composition amount
1.	Upto Rs. 1.00 lac	Nil
2.	More than Rs. 1.00 lac and upto Rs. 10.00 lac	Rs. 2,000/-
3.	More than Rs. 10.00 lac and upto Rs. 50.00 lac	Rs. 7,000/-
4.	More than Rs. 50.00 lac and upto Rs. 100.00 lac	Rs.2,000/-
5.	More than Rs. 100.00 lac and upto Rs. 200.00 lac	Rs.2,000/-
6.	More than Rs. 200.00 lac	Rs.21,000/-

For subsequent years, the composition amount shall be 105% of the composition amount determined for the immediately preceding year.

3.0 **Renewal of composition amount.** - The composition certificate shall be renewable each time for a further period of five years on the dealer submitting an application to the assessing authority on plain paper before thirty days of the expiry of the composition period. The composition certificate shall be enclosed with application along with the details of turnover for the composition period. On receipt of the application, the assessing authority shall, after making necessary inquiries, determine the composition amount in accordance with clause 2.0 and renew the composition certificate accordingly.

Conditions : 1. This scheme shall be applicable to the registered dealers only.

2. The dealers opting for the scheme shall submit an application on a plain paper to his assessing authority mentioning therein basic fact such as the name, registration number and the gross turnover of the immediately preceding year,

etc. within sixty days of the publication of this notfn or within thirty days of date of issuance of registration certificate. For subsequent years, such application shall be submitted within thirty days of the commencement the financial year. The application shall also be accompanied with a verification of gross turnover by the Jewellers Association, Jaipur or declaration of turnover as per books duly supported by an affidavit to this effect.

3. The whole of composition amount shall be paid in lump sum by a dealer already registered with the Department, within one month of the commencement of financial year; however, for the financial year 1999-2000, this amount can be deposited up to [31st December, 1999]. In case of new registration, the whole of the composition amount shall be deposited in lump sum within thirty days from the date of issuance of registration certificate.

4. In cases where a dealer availing of the benefit of the Scheme opts out of it and at any time thereafter opts for the scheme again, the composition amount payable shall not be less than what was payable in the last composition.

5. The composition certificate showing the amount payable under the scheme shall be deemed to be the assessment order-cum-demand notice for a registered dealer and no separate assessment order shall be required to be passed.

6. The dealer opting for composition of tax under this scheme shall be subject to all the provisions of the RST Act, 1994 and rules made thereunder, and the terms and conditions contained in this noftn.

7. The dealer shall not charge or collect any tax from a purchaser on the sale of goods during the composition period; however, tax charged or collected by6 the dealer shall have to be deposited forthwith and the tax already deposited shall not be refunded.

8. The dealer shall not be entitled to claim any deduction, set-off, partial exemption or refund in respect of purchases made by him.

9. If any dealer voluntarily withdraws from the scheme during the year, he shall be required to deposit the whole of the composition amount, if not already paid for the year, forthwith.

10. The composition amount shall be recoverable as arrears of land revenue under the RST Act, 1994.

11. The State Govt. may review the scheme and if substantial number of registered dealers of the State do not opt for it or on being satisfied that it will not be in public interest to continue the scheme, the State Govt. shall have powers to revoke the scheme forthwith or from such date as it may notify.

COMPOSITION CERTIFICATE UNDER "COMPOSITION SCHEME FOR DEALERS DEALING IN ALL KINDS OF SYNTHETIC GEMS AND STONES AND ALL KINDS OF PRECIOUS AND SEMI-PRECIOUS GEMS AND STONES (INCLUDING KHARAD), PEARLS (WHETHER REAL OR CULTURED) AND DIAMONDS, 1999"

Book NO. *Circle:*
Serial No. *Ward:*

Under the "composition scheme for registered dealers dealing in all kinds of synthetic gems and stones and all kinds of precious and semi-precious gems and stones (including kharad), pearls (whether real or cultured) and diamonds", I hereby permit M/s ..... (address ..... R.C.No..... under RST Act, 1994, to pay composition amount in lieu of tax on the purchase and sale of all kinds of synthetic gems and stones and all kinds of precious and semi-precious gems and stones (including kharad), pearls (whether real or cultured) and diamonds, in accordance with the provisions of the said scheme as follows:-

The composition amount computed as per the scheme for the years

Year *Composition amount*

This certificate remains valid for the period from ..... day of .....19... to the ..... day of ..... 2000.

Place: *Dated:* *Signature and Designation*

In case of renewal:

The composition amount computed as per the scheme for the years

Year *Composition amount*

This certificate remains valid for the period from ..... day of .....19... to the ..... day of ..... 2000.

Place: *Signature*
Dated: *Designation*

4. Both the appellate authorities have allowed the benefit of the said scheme to the respondent assessee on the ground that there is no eligibility condition as such in the said scheme that the dealer opting for the said scheme has to be registered dealer having taxable turnover in the immediately preceding year. Even new dealers commencing their business during the operative period of the said scheme are sought to be covered by the said scheme. Though the condition No. 1 of the said scheme stipulates that the said scheme shall be applicable to the registered dealers only but Clause (3) thereof further stipulates that in case of new registration, the whole of composition amount shall be deposited in lumpsum within 30 days from the date of issuance of the registration certificate. This puts beyond the pale of doubt the contention raised on behalf of the Revenue that unless the dealer is registered in the immediately preceding year and has taxable turnover, the basis of gross turnover for determining the composition amount cannot be assessed. The

scheme stipulates in Clause (2) of the conditions that dealers opting for the scheme shall submit an application on a plain paper to his assessing authority mentioning therein basic facts such as name, registration number (if any) and gross turnover of the immediately preceding year. Naturally, if the dealer does not have the business in the immediately preceding year, he can neither be registered during the said year nor having taxable turnover in such immediately preceding year and he has to verify the taxable turnover on the basis of books of accounts, affidavit or return and the revenue authorities are free to verify the same. Since the condition of having taxable turnover and registration in the immediately preceding year is not a condition precedent in the said scheme, the benefit of the said scheme cannot be denied to the eligible dealers on the said ground.

5. Both the appellate authorities, therefore, appear to have rightly arrived at the conclusion that the benefit of the said scheme could not be denied to the respondent assessee merely on the ground that he was not registered in the preceding year. In view of both the appellate authorities having allowed the said

benefit and moreover, by now with the lapse of five years since the year 2000, the respondent assessee might have availed the benefit of the said scheme completely by now. Therefore, this court finds no reason to interfere with the orders of the lower appellate authorities in its revisional jurisdiction under Section 86 of the Act.

6. Consequently, this revision petition is dismissed with no order as to costs. A copy of this order be sent to the respondent assessee.

(Dr.VINEET KOTHARI),J.

Pramod
Item No. 3